IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6862 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMIT B SEJU

Versus

STATE OF GUJARAT

Appearance:

MR AMIT M PANCHAL for Petitioners

Shri Digant P. Joshi, ASSTT GOVERNMENT PLEADER for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 07/03/2001

C.A.V. JUDGEMENT

The present petition is filed by two petitioners who belong to scheduled caste. The challenge in the petition is to an action of the respondents imposing 100% cut in appointment by unilaterally abolishing all the 72

posts of Assistant Motor Vehicle Inspector, which were vacant in the year 1994, instead of imposing only 10% cut as per the Government Resolutions and instructions issued from time to time. The main ground of challenge is that the respondent authorities have not imposed any cut on the post of (i) Regional Transport officer, (ii) Assistant Regional Transport Officer and (iii) Motor Vehicle Inspector. The say of the petitioners is that the action is discriminatory and also victimizing the persons belonging to the cadre of Assistant Motor Vehicle Inspectors. The petitioners also challenge the action of the respondent authorities of not carrying forward the backlog of two posts reserved for scheduled caste category in the cadre of Assistant Motor Inspectors, which according to them resulted into deprivation of the petitioners from being considered though the petitioners are not only eligible but were also on the waiting list. The say of the petitioners is that the posts were existing due to non filling of the required number of posts in the cadre of Assistant Motor Vehicle Inspector in the scheduled caste category during the last recruitment made pursuant to the advertisement issued in the year 1985.

2. The facts giving rise to the present proceedings are set out in para 4 of the petition, wherein it is stated that the respondents had issued advertisements no.27 and 28 dated 30.11.1985 through Gujarat Public Service Commission (hereinafter referred to as "GPSC"). Applications were invited for 52 posts of Assistant Motor Vehicle Inspector. A copy of the advertisement dated 30.11.1985 is produced at Annexure 'A' to the petition. A perusal to advertisement no.28 reveals that out of 52 posts, 8 posts were reserved for scheduled caste, 15 posts for scheduled tribe and 3 posts for Socially and Economically Backward Class (SEBC). The petitioners have asserted that the respondent authorities have filled in only 4 posts belonging to scheduled caste category and thus, there was a backlog of 4 posts of the scheduled caste category. It is then stated that the respondents then issued another advertisement on 30.4.1993 through GPSC inviting applications for 19 posts. A copy of that advertisement is at Annexure 'B', wherefrom it is clear that 17 posts were to be filled in from the candidates belonging to scheduled tribe category and 2 posts were to be filled in from the candidates belonging to scheduled caste category. The petitioners have also stated that the petitioners had applied pursuant to the said advertisement and after selection, the names of the petitioners were placed at serial no.1 and 2 in the waiting list. It is also stated that the petitioners had

all the reasons to believe that they will be considered for appointment as there was a backlog of 4 posts from the posts advertised in the year 1985 and as their names were appearing at serial nos.1 and 2 in the waiting list, but it seems that the petitioners were deliberately kept away from the appointment.

3. Thereafter, the respondents issued another advertisement on 3.6.1993 through GPSC inviting applications for 94 posts of Assistant Motor Vehicle Inspectors. A copy of the said advertisement is also produced at Annexure 'C' to the petition. Out of these 94 posts 8 posts were meant for the candidates belonging to scheduled caste, 16 posts for scheduled tribe and 11 posts for OBC. The case of the petitioners is that the petitioners having been selected in the year 1993 and wait listed at serial nos.1 and 2, were required to be considered for being appointed, more particularly when there were unfilled vacant posts for reserved for scheduled caste. The petitioners have also mentioned that the petitioners reliably learnt that respondents gave appointment to the first candidate selected to the said post in pursuance of the advertisement dated 30.4.1993 (Annexure 'B') in the month of March 1995 and second appointment was given to the candidate at serial no.2 only in January 1996. Therefore, the petitioners were not able to make any representation to the respondent authorities earlier. It is the case of the petitioners that they were meeting the concerned officers and making oral inquiries as regards their appointment. As per the say of the petitioners they had also periodically visited and requested officers, more particularly after issuance of advertisement at Annexure 'C', to give them appointment as they were listed at serial nos.1 and 2 of the waiting list prepared pursuant to the advertisement dated 30.4.1983 (Annexure 'B'), which was to be operative till 6.9.1996.

4. The petitioners have also submitted that as the petitioners did not get any response from the respondents, they made a written representation dated 26.7.1996 (Annexure 'D') to respondent no.2, Director of Transport, Gujarat State, wherein it was requested that the petitioners may be given appointment on the post of Assistant Motor Vehicle Inspector before the list expires on 6.9.1996. The petitioners had pointed out in the said representation that the backlog was not carried forward which in fact were required under law as there were vacancies in scheduled caste category which were not filled in during the last recruitment made in the year 1985.

5. Mr.Amit Panchal, learned advocate for petitioners has produced certain documents during the course of the arguments, to substantiate that there were vacancies and that there was backlog for the scheduled caste. He produced a letter dated 3.8.1996 written by the office of the Director of Transport to the Joint Secretary (Transport Section), Home department is produced wherein it is mentioned that on the date of the letter 7 posts of General Category and 17 of scheduled tribe category (backlog) are vacant. The letter further mentions that in the year 1992, according to the roster, the backlog of scheduled caste was that of 2 posts and of scheduled tribe was that of 17 posts. He also submitted that for 94 posts, two demands were made by the office of the Director of Transport; one on 10.8.1992 and the other on 23.3.1993. It is clear from these demands that in the year 1992, there was a backlog of two posts in scheduled caste category. Learned advocate for the petitioners also produced a letter dated 9.8.1996 written by the office of the Director of Transport to the Joint Secretary (Transport Section), Home Department, wherein it is stated that on the date of the letter, strength of the cadre of Assistant Motor Vehicle Inspector was that was that of 54 posts, of which 47 posts were duly filled and as 7 Assistant Motor Vehicle Inspectors were promoted to the post of Motor Vehicle Inspectors on 25.7.1996. There are 7 posts vacant. It is also stated that 7 posts of general category and 17 posts of scheduled tribe category (backlog), totalling 24 posts are vacant. Further, it is tried to be clarified that in letter dated 3.8.1996, 17 posts which are shown vacant of the scheduled tribe category are in fact that of backlog of scheduled tribe category. This letter states that on 25.7.1996, 7 posts fell vacant on account of promotion of Assistant Motor Vehicle Inspectors to the post of Motor Vehicle Inspectors. Learned advocate for the petitioners has produced an order dated 25.7.1996 by which two Assistant Motor Vehicle Inspectors were promoted to the post of Motor Vehicle Inspectors. It is submitted that both these persons are of scheduled caste category and therefore, two more vacancies are created in the cadre of Assistant Motor Vehicle Inspector, which are required to be filled in by the candidates belonging to scheduled caste. Learned advocate has also produced a Govt. Resolution dated 10.7.1989 issued by the General Administration Department, wherein it is laid down that in the event of implementing "economy measures", exemption/ relaxation is to be given in the matter of filling up the posts of backlog belonging to scheduled caste and scheduled tribe. In para 4 of the said Govt.

Resolution it is specifically mentioned that as and when on account of economy measures a ban is imposed on filling up of the posts, the same should not be made applicable to the posts which are to be filled in as backlog of scheduled caste and scheduled tribe. Learned advocate has also produced a Govt. Resolution dated 28.10.1981 whereby economy measures were sought to be imposed, but in that also it is reiterated that whenever the question of filling up of the backlog vacancies is concerned such economy measures will not be applicable. Learned advocate also submitted that by letter dated 9.8.1996 it is conveyed by the Director of Transport to the Joint Secretary that on transfer of 7 posts on 25.7.1996, 7 posts fell vacant and thus, 7 posts are also going to be filled in by scheduled tribe candidates which will amount to conversion of scheduled caste category posts into scheduled tribe category posts, which is not permissible under the Govt. Resolution issued from time. It is specifically laid down in Govt. Resolution dated 21.10.1991, which is also produced along with other Govt. Resolutions at Annexure 'Z- 2'. In para 8 of 21.10.1991 Resolution it is clearly laid down that the post falling vacant on account of resignation, retirement, promotion, transfer or for any other reason, the same should be filled in by the candidates belong to the same category. It is also stated in the said para that this is required to be done in order to see that by utilising the vacant posts the target of filling the maximum backlog posts can be achieved.

6. Learned advocate for the petitioners submitted that the decision of the Govt. of abolishing 72 posts is also unjust, arbitrary and in violation of the express decision of the Government which is stated in Government Resolution dated 28.10.1991. It is stated in para 2 of the Govt. Resolution that in every administrative department and under the control of the Head of the Department in various offices, the strength of various cadres should be taken into consideration and in every cadre for placing 10% cut the posts shall be separately identified. Accordingly, the posts which are so identified cancelled by taking into consideration the present vacant posts and also the posts falling vacant on account of death, retirement, etc. It is also stated that this exercise is to be undertaken stagewise. It is reiterated at this juncture that these economic measures will not be applicable to the backlog vacancies of the reserved category.

7. In reply to this petition, an affidavit in reply is filed by Shri B.T. Mistry, Deputy Director of

Transport, Gujarat State, Ahmedabad. The reply affidavit does not render any assistance; except putting a formal denial of the averments made in the petition, the reply hardly mentions anything. The reply is not in a position to clarify as to what happens to the posts which had remained vacant after recruitment made pursuant to advertisement dated 30.11.1985. In that advertisement 8 posts reserved for scheduled caste were advertised and of which according to the petitioners only 4 posts were filled in and 4 posts remained vacant. It is surprising that along with affidavit in reply, annexure 'A' is produced which is in a tabular form which does not mention 1985 recruitment at all. In view of that it is clear that the respondents have nothing to submit about the averments made in the petition regarding backlog of 4 posts at the end of the recruitment of the year 1985. The affidavit in reply proceeds to state that in the year 1988 there was a backlog of 2 posts belonging to scheduled caste category and at that time there was a recruitment of 4 scheduled caste candidates and therefore, there was surplus of 2 scheduled caste candidates. This is not borne out from any other material which is produced by the petitioners, namely, letters dated 3.8.1996 and 9.8.1996. The affidavit in reply says that two persons were appointed pursuant to advertisement dated 30.4.1993 and therefore, there was no question of any backlog in scheduled caste category. This cannot be believed in face of the letter dated 3.8.1996 wherein it is clearly stated that in the year 1992 there was a backlog of 2 posts of scheduled caste category. The advertisement dated 30.4.1993 was also issued for 19 posts of which 2 posts were of scheduled caste. In that advertisement there was no reference to the backlog in the year 1992. Thus, the affidavit in reply filed by the respondents is of no assistance at all. Not only that about more important question of having abolished 72 posts of one single cadre, the affidavit in reply is not giving any reason as to why that decision was taken. It is surprising that the affidavit in reply states in para 8 as under:

> "With reference to para 4.5, i say that due to the Govt. policy of economy in administrative expenditure 72 vacant posts of Asstt. Inspector of Motor Vehicle were abolished. Further 22 posts of Asstt. Inspector of Motor Vehicle which were sanctioned for implementation of Toll Tax introduced w.e. from 7.4.1992 were also abolished since Toll Tax discontinued w.e. from 1.9.1993. Therefore, the procedure for recruitment of Asstt. Inspector of Motor

Vehicles in pursuance of the advertisement dated 3.6.93 has been discontinued."

8. Government Resolution dated 28.10.1981 is very clear which says that the authorities have to take into consideration the strength of every cadre and thereafter 10% posts are to be separately identified and they are to be abolished stagewise after taking into consideration the present vacancies along with the vacancies arising on account of death, retirement, etc. However, the deponent has not explained as to how and on what basis/ material the Government decided to abolish 72 vacant posts of the single cadre of Assistant Inspector of Motor Vehicle. On the question as to whether the Govt. has abolished any post in the cadre of Regional Transport Officer, Assistant Regional Transport Officer or Motor Vehicle Inspector and if NOT, WHY the affidavit in reply is mysteriously silent. The affidavit in reply proceeds on the footing that the person whose name is appearing on the waiting list has no right and that the purpose of placing the name of a person on the waiting list is only that in case any selected candidate does not join his duty or any vacancy which was taken into consideration at the time of sending requisition to GPSC occurs within a period of two years from the date of preparation of select list, the person may get the benefit of being on the waiting list.

9. A rejoinder is filed by the petitioners to the said reply, wherein averments made in the petition are reiterated and it is stated that in the year 1988 the respondent authorities have filled in only 4 posts and therefore, 4 posts remained vacant and it is also pointed out that the recruitment made in the year 1985 is not referred to in the said table (Annexure 'A' to the affidavit in reply) and therefore, said table does not give any assistance to reply to the contentions raised by the petitioners.

10. Learned advocate for the petitioners relied upon a judgement of the Apex Court in the matter of Virender S. Hooda and others v. State of Haryana and another, reported in (1999) 3 SCC 696. Learned advocate for the petitioners submitted that the Apex Court has held in that case that,

"The case of the appellant ought to have been considered when some of the vacancies arose by reason of non appointment of some of the candidates recommended by the Commission. Government ought to have considered the

appellants' case as per rank obtained by them and should have appointed them if they came within the range of selection. .. .."

It was also pointed out that the Apex Court has held that,

"The view taken by the High Court that administrative instructions cannot be enforced by the appellants and that vacancies became available after initiation of process of recruitment, would be looking at the matter from a narrow and wrong angle. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time, and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

11. On the point of nature of relief to be granted, learned advocate for the petitioners pointed out that the Apex Court was pleased to direct the respondents to consider the cases of the appellants for appointment and that the appellants shall be fitted to the post ranking below those who had been selected along with the appellants at the time of recruitment made pursuant to the result declared in June 1992. It was also directed by the Apex Court that the appellants will be fitted in appropriate posts and they will be accorded appropriate scale of pay by giving them benefit of increments, if any, but they will not be entitled to any monetary benefits for the period for which they have been kept out of employment.

12. In the result, the action of the respondent authorities of abolishing 72 vacant posts in the cadre of Assistant Motor Vehicle Inspector is hereby quashed and set aside and it is directed that the respondents shall undertake that exercise in accordance with the Government Resolution dated 28.10.1991. The respondents are also directed to consider the case of the petitioners for giving appointment in the post of Assistant Motor Vehicle Inspectors on the basis of their being at serial nos.1 and 2 respectively in the waiting list in pursuance of the recruitment drive made in the year 1993, vide advertisement dated 30.4.1993. In the event of the decision of the Government is favourable to the appellants they shall be fitted to the posts ranking below those who had been selected along with the petitioners and they shall be accorded appropriate scale

of pay by giving them benefit of increments, if any, but they will not be entitled to any monetary benefits for the period for which they have been kept out of employment.

13. The petition is allowed. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

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